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MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON, DC 20006				PATEL, RITA RAMESH
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/629,774

Filing Date: July 03, 2003

Appellant(s): GERLACH ET AL.

MAILED
SEP 24 2007
GROUP 1700

Mark Kresloff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/12/07 appealing from the Office action
mailed 2/1/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1 and 3-40.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claims 1, 3-9, 12, 13, 15-30, 34, 35, and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer et al. herein referred to as "Geyer" (DE10053413) further in view of Mills (US Patent No. 5,799,647).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and Mills, further in view of Faccoli (EP 0851177 A1).

Claims 14 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and Mills, further in view of Linton et al. herein referred to as "Linton" (US Patent No. 6,109,277).

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and Mills, further in view of Gebhardt (US Patent No. 3,223,276).

Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer, Mills and Faccoli, further in view of Gebhardt.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

DE10053413	Geyer	05-2002
5,799,647	Mills	09-1998
EP851177	Faccoli	07-1998
6,109,277	Linton	08-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1, 3, 4, 8, 9, 15, 26-28, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated over Geyer (Patent No. DE10053413).

Geyer teaches a washing machine with a porthole door assembly including a glass cover 9; the glass cover 9 is illustrated as a curved window. Furthermore the porthole door of Geyer is identified as aesthetic and easy to assemble. The cover 9 has an inner window part called an inspection glass 5 (Abstract). The door frame of Geyer is circular and inherently curves/arcs about its perimeter in right/left direction; the glass cover window 9 is curved the same with the door frame. As seen in Figure 2, there is a rim projection part 8 for enclosing an outer circumference of the outer window 9, as well as inspection glass 5. In Figure 2, below numeral 13, there is shown a gasket which extends between the door and the inner window surface.

Part 8 of Geyer has a V-shaped bent part, as seen in Figure 2, for increasing rigidity of an inner window attaching region.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 29, 30, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer.

Re claims 6, 7, 29 and 30 wherein there are claims for paint coated colors, it has been found that choice in aesthetic designs was held to have been obvious. *St. Regis Paper Co. v. Beemis Co. Inc.* 193 USPQ 8, 11, (1977); *In re Harza* 124 USPQ 378 (CCPA 1960).

In addition, Geyer does not explicitly disclose a specific angular range for the slope of the inner wall, taught above; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to slope the angle within the range of about 1-20 or even 8-10 degrees since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Geyer teaches a washing machine, in conventional manner, clothes to be dried are loaded into drum through the front access opening. Moreover, the position is taken that one of ordinary skill in the art would at once envisage that a motor is anticipatory for rotating the clothes drum.

Claims 5, 16-25, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and further in view of Mills (US Patent No. 5,799,647).

Geyer teaches the claimed invention having a rim projection part 8, except fails to disclose in detail the composition of said means used for fixing the inner and outer windows. However, Mills teaches this deficiency by disclosing a door having a pair of rectangular window panels held in spaced parallel relation by a frame. Retainer flanges extend laterally outwardly from the spacer flanges over the edges of the panels and clips are provided to clamp the panels to the frame (Abstract). It would be obvious to one of ordinary skill in the art to use such fixing means for holding together a pair of windows in the door of Geyer since Mills also teaches holders for an inner and outer window assembly in a domestic home appliance. Also it would have been obvious to one of ordinary skill in the art at the time of the invention to use such fastening means for dual window panes for achieving expectations of allowing the user to see within the apparatus during operation, while maintaining means for ensuring minimal heat loss.

Mills teaches a window unit 10 has a pair of rectangular window panels or panes 14, 16 are made of glass or the like transparent or translucent material, a frame 18 and clips 19. The frame is preferably made of a one-piece strip of metal or other flexible, bendable material (col. 2, lines 1-4 and 10-11). The frame may be made of bendable material, as taught by Mills, thereby being able to conform to curved or other shapes. Also, glass or like transparent materials, such as plastic are commonly known to be mutable in shape and therefore engageably fit the shape of the frame, as taught by

Art Unit: 1746

Mills. The clips taught by Mills above, reads on claims for a “plurality of hooks on an outer peripheral surface”. Therefore, the frame and window may be formed of a curved surface wherein the inner and outer windows are curved the same with the frame of the window panels. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

Curved windows are commonly known in the art for achieving a strong window surface that is a known equivalent in the art for maintaining minimization of heat loss therefrom, while concurrently providing an aesthetic view for the user to see inside the machine. A curved window amplifies the view inside the apparatus, hence allowing a magnified/detailed view to the user of items being laundered therein. Users commonly check on the status of the items being laundered therein said machines during operation thereby allowing users to check the status of laundering without opening the machine or impeding laundry functions; a laundry machine comprising an enhanced curved-window view achieves said means for an aesthetically improved view inside the machine. Choice in aesthetic designs was held to have been obvious. *St. Regis Paper Co. v. Beemis Co. Inc.* 193 USPQ 8, 11, (1977); *In re Harza* 124 USPQ 378 (CCPA 1960).

Aforementioned flanges taught by Mills form a space between the first and second windows and clips are provided for fastening window panels to the frame, which can be attached to the frame of Geyer. Moreover, gaskets/sealing members are

commonly known in the art for sealing door members of laundry machines and although Mills provides clips for fastening said windows, other fixing agents, such as a liquid sealant are known equivalents in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a liquid sealant for sealing said door members since appellant has not disclosed that liquid sealant solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with other sealants and the selection of any of these known equivalents to provide adherent functions would be within the level of ordinary skill in the art.

Mills discloses that in order to assemble the parts of the window unit, the panels 14 and 16 are placed against the spacer flanges 30 and 32 of the frame, inside the retainer flanges 36, 38, 40 and 42 so that the retainer flanges engage the edges of the panels (col. 3, lines 16-19). The flange/clip system disclosed by Mills can be made adjustable to fit the sloped inner door taught by Geyer. Hinges and clips are inherently known to be made adjustable, hence it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide adjustable clips and hinges in the window unit of Mills for an appropriate fitting to Geyer's walls since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Claims 10-13 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and Mills, further in view of Faccoli (EP 0851177 A1).

Geyer and Mills disclose the Geyer teaches sealing by means of a gasket, however, they do not disclose how the gasket is sealed thereupon the door assembly; it would be known in the art that any functional equivalence for mounting said gasket would be reasonably effective. Arguably, hooks and holes to mount the seal thereupon would be an effective means for mounting the gasket. Faccoli teaches an elastomer sealing gasket to be interposed between a front rim of the oven and the oven door, comprising a continuous strip 1, provided with metal elements 2, 2', having respective hooks 21, 21' for engagement in corresponding holes provided in the oven structure which said metal elements 2' are inserted in a tubular cavity 3 of the gasket through respective openings 30 made in a wall 4 defining said tubular cavity on one side 3 said openings 30 having an intermediate portion 31 extending substantially in the longitudinal direction of said strip 1 and two end portions 32 with an arched outline (Abstract). Although Faccoli's gasket teaching is not explicitly stated for a door of a front loading laundry machine, it may be used for said purpose. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963). Moreover, Faccoli teaches it would have been obvious to provide a thickness of a seating groove for said gasket holes, as shown in Figure 4 by the mounting of the gasket within the gasket holes—the seating groove would be used for holding the hooks therein.

Claims 14 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geyer and Mills, further in view of Linton et al. herein referred to as "Linton" (US Patent No. 6,109,277).

Geyer and Mills teach the claimed invention, however, fail to disclose paint coatings disposed thereupon said apparatus. Linton discloses a parts washer wherein the housing 20 may also be covered with insulating ceramic paint, the insulation increases the efficiency of the parts washer by maintaining a minimization of heat loss for the apparatus (col. 5, lines 7-9). It would be obvious to one of ordinary skill in the art at the time of the invention to use ceramic paint in the coating of the apparatus taught by Geyer and Mills. Although Linton teaches the use of ceramic paint for a parts washer, the ceramic paint may equally be used for a laundry machine for the same purpose. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

(10) Response to Argument

In appellant's remarks filed 6/12/07, appellant argues that the Studt reference further in view of Mills fails to teach an outer window that is curved. However, the Studt reference has been withdrawn herein and the Geyer reference is employed in place of Studt. Geyer teaches said curved inner and outer window 5, 9 for a washing machine.

The glass cover of Geyer inherently curves in a right/left direction since it is circular and spherical.

Appellant further argues that Mills fails to disclose "an outer window fixed to a front surface of the door frame, and an inner window fixed to a rear surface of the door frame", however, in view of the new grounds of rejection, Geyer teaches that the outer and inner windows are each fixed to a surface of the door frame by retaining ring 8.

In the last paragraph on page 7 of the Appeal Brief, Appellant contends that there is no supporting motivation for the desirability of a curved front window surface in Mills, however, in the new grounds of rejection, it is taught that Geyer teaches a curved window surface, and supports the use of a curved window surface by indicating that it has aesthetic benefits (Abstract of Geyer). Correspondingly, in the last paragraph on page 8, Appellant challenges the Examiner's assertion that curved window features in washing machines are "commonly known"; the teaching of Geyer's curved window surface in a washing machine is now evidence of said curved window feature.

The arguments in re dependent claims are based on Appellant's arguments directed towards the independent claims, and more specifically the former Studt in view of Mills references, however, this rejection has been withdrawn and these arguments are now considered moot. These dependent claims now addressed under the new grounds of rejection made over Geyer, and Geyer in view of Mills as seen supra.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to

reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Rita R. Patel



A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:


GREGORY MILLS
QUALITY ASSURANCE SPECIALIST

Conferees:

Michael Barr


MICHAEL BARR
SUPERVISORY PATENT EXAMINER


Romulo Delmendo
Appeals Specialist